**HARIS ARMAN** A

**v.**

**BERJAYA TS MANAGEMENT SDN BHD & ANOR**

HIGH COURT MALAYA, KUALA LUMPUR B
LAU BEE LAN J
[SUIT NO: S-22-908-2008]
31 MAY 2013

***TORT:*** *Negligence - Damages - Claim for - Deceased died after falling from "exhaust room" on 7th floor of defendant's premises - Whether defendant negligent in failure to lock room or provide proper signage - Whether deceased trespassed into exhaust room - Whether defendants absolved of liability* C

***TORT:*** *Negligence - Trespasser - Deceased died after falling from "exhaust room" on 7th floor of defendant's premises - Whether deceased trespassed into exhaust room - Whether deceased's act of trespass negligent, unreasonable, reckless and unforeseeable - Whether maxim ex turpi causa non oritur actio absolved defendant of liability* D

***TORT:*** *Negligence - Volenti non fit injuria - Deceased died after falling from "exhaust room" on 7th floor of defendant's premises - Whether deceased trespassed into exhaust room - Whether deceased understood risk of injury and assumed responsibility for risk - Whether defence of volenti non fit injuria applicable* E F

The plaintiff's claim against the defendant arose from the death of his son, the deceased, who had purportedly fell from the exhaust room of the 7th floor of the building of Berjaya Times Square Shopping Mall, Kuala Lumpur ('the defendant's premises'). The G deceased, together with his girlfriend ('SP1'), were looking for the toilet at the defendant's premises. They had followed the 'toilet' sign but the deceased, who was looking desperately for a toilet, had entered the exhaust room despite it being dark. SP1 heard a loud noise, and the deceased was found to have fallen from the H 7th floor. The plaintiff thus alleged negligence on the part of the defendant's that had resulted in the death of the deceased at the defendants' premises. The defendants' defence, *inter alia*, were that: (i) the deceased had trespassed into a room at Level 7 which had been clearly labelled as "SALURAN EKZOS DAPUR" which I was secured and/or locked by the defendants; (ii) the deceased had failed to adhere strictly to the directional signboards despite

having knowledge of the signage and thus the defence of *volenti non fit injuria* would apply to absolve the defendants' liability; (iii) the action of entering the exhaust room by the deceased was negligent and/or unreasonable and/or unforeseeable; and (iv) the act of trespass was an illegal act which allowed the defendants to rely on the maxim *ex turpi causa non oritur actio ie*, no cause of action would arise from the illegal act of the deceased.

**Held (dismissing plaintiff's claim with costs):**

**(1)** There was material discrepancy between the evidence of SP1 and SP2, the plaintiff's witness with respect to the condition of the lockset on the door of the room which the deceased entered and as to whether there was sign on the door of "SALURAN EKZOS DAPUR". However, SP2, being a neutral party as compared to SP1, was more believable. Hence, the court was satisfied that the condition of the lockset on the door was as shown in the two photographs, exhs. P4(1)(c) and P4(1)(e) and that there was a signage at the door of the room which the deceased entered based on the photographs exhs. P4(1)(c) and P4(1)(d) bearing the words "SALURAN EKZOS DAPUR". (para 10)

**(2)** The plaintiff's submission on the statement by Ahmad Chalil, the supervisor carpenter, who stated that he had changed the lockset, was not totally accurate, as it was not a report but Ahmad Chalil's statement made for "insurance purposes". It was not clear as to when Ahmad Chalil changed the lockset. In any event, the failure to call Ahmad Chalil to testify on the condition of the lockset of the exhaust room entailed the court to draw an adverse inference against the plaintiff under s. 114(g) of the Evidence Act 1950. (paras 11 & 12)

**(3)** The deceased had acted recklessly when he entered the exhaust room knowing full well that he was on the 7th floor and despite the presence of clear directional signboard pointing to the direction of the toilet and the said room being pitch dark. Hence, the deceased was fully appraised of and understood the risk of injury that may result in trespassing the exhaust room and he assumed responsibility for the risk which entitled the defendant to rely on the defence of *volenti non fit injuria* to absolve the defendants' liability. (para 15)

**(4)** The action of the deceased indicated that he had acted negligently, unreasonably and recklessly and further, his action was unforeseeable. No reasonable person would have acted as the deceased did. In the circumstances, the defendants could not be liable for the unforeseeable conduct of the plaintiff. (para 16)

**(5)** The act of the deceased in entering the exhaust room constituted an illegal act of trespassing which merited the application of the maxim *ex turpi causa non oritur actio*. (para 17)

**Case(s) referred to:**
*Clunis v. Camden and Islington Health Authority [1998] 3 All ER 180* ***(refd)***
*Formosa Resort Properties Sdn Bhd v. Bank Bumiputra Malaysia Bhd [2010] 6 CLJ 530 CA* ***(refd)***
*Lee Geok Theng v. Ngee Tai Hoo & Anor [2000] 1 LNS 220 HC* ***(foll)***
*McKew v. Holland & Hannen & Cubitts (Scotland), Ltd [1969] 3 All ER 1621* ***(refd)***
*Selvaduray v. Chinniah [1939] 1 LNS 107* ***(refd)***
*Suzana Md Aris v. DSP Ishak Hussain & Ors [2011] 1 CLJ 226 HC* ***(dist)***
*The Six Carpenters' Case 1610 8 Co Rep 146a* ***(refd)***
*Yeoh Yew Jin v. Mohd Zabidi Hassan & Satu Lagi & Kes Yang Lain [2011] 1 LNS 695 HC* ***(dist)***

**Legislation referred to:**
Evidence Act 1950, s. 114(g)

**Other source(s) referred to:**
*Winfield and Jolowicz on Tort,* 12th edn, p 370

*For the plaintiff - Muhammad Rafique Rashid Ali (Zainal Narudin with him); M/s Law Practice of Rafique*
*For the defendants - Young Hiang Siong (Patricia Louis with him); M/s Azim, Tunku Farik & Wong*

*Reported by S Barathi*

## JUDGMENT

**Lau Bee Lan J:**

**[1]** In this suit, the plaintiff's claim against the defendants arises from the death of his son, Jamilman bin Haris ("the deceased") who purportedly fell from the exhaust room of the 7th floor of the building of Berjaya Times Square Shopping Mall, Kuala Lumpur

("the defendant's premises"). The plaintiff claims, *inter alia*, for general damages, special damages of RM1,002, aggravated damages, exemplary damages, damages for pain and suffering, bereavement, interest and costs.

**[2]** The plaintiff alleged the incident occurred in the following manner:

(i) Pada 2.3.2008 si mati bersama dengan rakannya seorang yang bernama Farrah Waheeda binti Anuar berada di Berjaya Times Square untuk bersiar-siar dan membeli belah;

(ii) Semasa sedang membeli belah si mati tiba-tiba terasa keperluan untuk ke tandas untuk membuang air dan menyuruh rakannya menunjukkan arah ke tandas di Tingkat Tujuh (7) Berjaya Times Square. Si mati dan rakannya terus sahaja mengikut arah penunjuk arah yang menunjukkan 'tandas' namun si mati tidak dapat menahan keperluan untuk membuang air kecil dan terus menuju ke arah sebuah pintu berhadapan dengan tangga kecemasan dan bersebelahan dengan telefon awam di Tingkat Tujuh (7) Berjaya Times Square;

(iii) Sebaik sahaja sampai di hadapan pintu tersebut si mati terus menarik pintu yang tidak berkunci itu dan masuk ke sebuah kawasan gelap. Si mati telah menyuruh rakannya itu untuk menyendal pintu tersebut dengan kakinya untuk membolehkan sedikit cahaya menembusi kawasan gelap tadi;

(iv) Tiba-tiba rakan si mati terkejut apabila kedengaran bunyi jatuh yang amat mengerunkan dan beliau dapati si mati telah jatuh ke dalam sebuah lubang yang berada di sebalik pintu tidak berkunci itu dan lubang itu sedalam tujuh (7) tingkat.

**[3]** The plaintiff alleged the defendants were negligent in that:

(i) bahawa kawasan yang mana si mati telah masuki adalah berbahaya ataupun mempunyai kemungkinan bahaya;

(ii) untuk memastikan pintu di mana kejadian berlaku adalah sentiasa berkunci dan juga tidak akan dapat di buka oleh sesiapa sahaja kecuali kakitangan berkenaan pihak Defendan-Defendan;

(iii) untuk memastikan bahawa kesemua pelawat ke premis Berjaya Times Square termasuk si mati berada dalam keadaan selamat semasa berada dalam premis mereka;

(iv) membiarkan sebuah kawasan sebegitu merbahaya tanpa mengambil apa-apa langkah keselamatan seperti meletakkan pengawal di hadapan pintu tersebut, meletakkan pita keselamatan ataupun apa-apa isyarat amaran atau merbahaya di kawasan tersebut;

(v) untuk menyatakan secara jelas kepada mana-mana orang yang berada dalam premis Berjaya Times Square terutamanya si mati bahawa terdapat kawasan merbahaya di Tingkat Tujuh premis tersebut;

(vi) untuk mengambil segala langkah-langkah berjaga-jaga yang lain untuk mengelakkan perkara seperti ini berlaku.

**[4]** Essentially the defendant's defence is:

(i) the Deceased had trespassed into a room at Level 7 of the Defendants' premises and which has been clearly labeled as "SALURAN EKZOS DAPUR" ("the Exhaust Room") as the Exhaust 15 Room was secured and/or locked by the Defendants;

(ii) the Deceased failed to adhere strictly to the directional signboards showing the way to the toilet and the signage showing the word "SALURAN EKZOS DAPUR" on the entrance door of the Exhaust Room despite having knowledge/view of the signboards and signages and therefore, the defence of *volenti non fit injuria* would apply to absolve the Defendants' liability;

(iii) the Deceased's act of trespass was negligent and/or unreasonable and/or reckless and/or unforeseeable at all material times; and

(iv) the Deceased's act of trespass was an illegal act which allows the Defendants to rely on the maxim or *ex turpi causa non oritur actio* i.e. no cause of action will arise from the Deceased's illegal act.

**[5]** At the trial, the plaintiff had four witnesses, namely, (i) Farah Waheeda binti Anuar (SP1), the deceased's girlfriend, (ii) Sargeant Sambasivam Ganapathy (SP2), the investigating officer, (iii) Haris bin Arman (SP3), the deceased's father, (iv) Lelyana binti Haris (SP4), the deceased's sister.

(a) The defendant called five witnesses, namely, (i) Lim Wei Chong (DW1), the adjuster with McLaren Saksama (Malaysia) Sdn Bhd at four the material time, (ii) Shahidan bin Hassan

A (SD2), the officer on duty at the Bilik Gerakan Berjaya Times Square at the material time, (iii) Nurul Hidayah binti Zainal Abidin (SD3), the security officer on duty at the bilik gerakan (iv) Rosmah binti Ladin (SD4), the security supervisor and (v) Zuraidah binti Husin (SD5), the security officer on five duty
B at the safety office at the material time.

**[6]** Upon a consideration of the plaintiff's written submission dated 2 November 2012 ("F"), the defendant's written submission dated 30 October 2012 ("G") and the respective oral reply, the
C court's findings are the following.

**Issues**

**[7]** Broadly, the two primary issues are:

D (a) whether the defendants were negligent resulting in the death of the deceased at the defendant's premises; and

(b) if liability is established, whether the plaintiff is entitled to the damages claimed.

E **Findings Of The Court**

*Whether The Door Of The Exhaust Room Was Locked?*

**[8]** SP1 in examination in chief (Q&A 14 WSSP1) stated:

F 14. Soalan : Sila rujuk muka surat 61, 62, 63 dan 64 Ikatan Dokumen Bersama (Ikatan B). Sila jelaskan?

Jawapan : Pada muka surat 61 ini adalah gambar tingkat 7 tetapi saya tidak pasti dari arah mana ianya diambil. Muka surat 62 ini adalah kawasan ruang yang
G mana kami mencari tandas. *Muka surat 63 nampak seperti pintu yang dimasuki mangsa. Tetapi masa itu tidak berkunci dan tiada apa-apa tanda amaran mahupun papan tanda. Gambar pada muka surat 64 pintu itu bertombol bukan seperti pada gambar ini.*
H (emphasis added)

(a) In cross-examination, SP1 testified:

S: Ms. 64 Ikatan B. Adakah ini merupakan pintu yang dimasuki oleh si mati?

I J: Ya, tetapi ta' ada lock seperti dalam gambar.

S: Kamu kata ta' ada lock. Apa ada di situ?

J: Kosong.

(b) In re-examination, SP1 stated:

S: Ms. 63 dan 64 Bundle B.

Paling penting sekali.

Adakah ms. 63 dan 64 merupakan keadaan pintu pada masa kejadian?

J: Tidak.

S: Terangkan apa keadaan pintu?

J: Keadaan pintu itu ta'ada tanda, ta'ada sign tunjuk saluran ekzos. Ta'ada tempat pemegang pintu. Pintu itu dalam keadaan kusam (faded).

**[9]** SP2 in examination-in-chief stated:

Ya, saya ada lawat tempat kejadian.

Saya telah ambil gambar.

Saya melawat tempat kejadian pada hari kejadian pada 2.3.2008 lebih kurang 6.50 petang.

Saya ada ambil gambar di tempat kejadian.

Saya ada jurugambar Kpl. Rosli atau pun Konst. Ruszaimi untuk ambil gambar.

Gambar-gambar di ms. 26-37 Ikatan B diambil pada keesokan: 3.3.2008.

(a) In cross-examination SP2 stated:

S: Rujuk ms. 28 & 29 Ikatan B. Jika dilihat terdapat satu tanda bernama Saluran Ekzos Dapur pada pintu.

Adakah ini pintu bilik yang kononnya dimasuki oleh si mati?

J: YA, betul.

S: Adakah pintu tersebut bertombol seperti di ms. 28 dan 30?

J: Semasa saya melawat di tempat kejadian pintu itu memang seperti dalam gambar.

A (b) There was no re-examination on the condition of the lockset on the door of the exhaust room.

**[10]** Based on the evidence alluded to above, I find there is a material discrepancy between the evidence of SP1 and SP2, both
B of whom are plaintiff's witnesses:

(i) with respect to the condition of the lockset on the door of the room which the deceased entered; and

(ii) whether there was sign on the door of "SALURAN
C EKZOS DAPUR".

(a) I accept the evidence of SP2 as being more believable as he is a neutral party as compared to SP1 who is the girlfriend of the deceased. Hence notwithstanding that the photographs
D exh. P4(1)(c) (bundle B p. 28) and exh. P4(1)(e) (bundle B p. 30) were taken on 3 March 2008, one day after the incident, I am satisfied:

(i) that the condition of the lockset on the door is as shown
E in these two photographs since SP2 has positively stated this fact when he first arrived at the scene of the incident at 6.50pm on 2 March 2008. This evidence of SP2 was not challenged.

(ii) there was a signage at the door of the room which the
F deceased entered based on the photographs exhs. P4(1)(c) and P4(1)(d) (bundle B p. 29) bearing the words "SALURAN EKZOS DAPUR".

**[11]** The defendant tendered the evidence of the first report
G commercial – public liability dated 3 April 2008 (exh. D12, bundle B pp. 38-70) and the second and final report commercial - public liability dated 18 June 2008 (exh. D13, bundle B pp. 71-86) prepared by SD1. At p. 85 of this second and final report commercial - public liability is a statement of Ahmad Chalil bin
H Osman, the supervisor carpenter recorded by SD1 on 24 November 2008. However in relying on this statement, learned counsel for the plaintiff submitted it was Ahmad Chalil's report on the accident stating "beliau telah menukar kunci pintu tersebut pada waktu malam hari kejadian (2 Mac 2008) kerana telah
I diumpil".

(a) With regret I must say that the statement of the learned counsel for the plaintiff is not totally accurate, firstly, in the sense it is clear that it is not a report but it is Ahmad Chalil's statement made for "insurance purposes" and secondly, it is not clear as to the accuracy of the statement as to when Ahmad Chalil changed the lockset. In my opinion it is evident from the statement, it is not clear when the change took place, whether on 2 March 2008 or on some other date. For ease of understanding, the relevant portion of the statement is reproduced:

> Pada 2.3.2008, saya diberitahu oleh bilik gerakan bahawa kunci pintu Bilik Saluran Ekzos Dapur, tingkat 7, Berjaya Times Square sudah rosak. Saya diminta menukar kunci pintu tersebut.
>
> Waktu tersebut sudah waktu malam (masa saya tidak ingat). Masa saya pergi ke tempat tersebut, saya dapati kunci pintu tersebut sudah diumpil. Saya pun menukar kunci pintu tersebut seperti diarahkan. Kunci yang rosak, saya buang.

**[12]** I accept the plaintiff's submission that the lockset at p. 63 and 64 bundle B (exhs. D3C and 3D) taken on 27 March 2008 is different from the lockset at bundle B pp. 28 and 30 (exhs. P4(1)(c) and P4(1)(e) taken on 3 March 2008. However this does not detract from the fact that the burden is on the plaintiff to prove its case that the exhaust room was unlocked at the material time (*Selvaduray v. Chinniah* [1939] 1 LNS 107; [1939] MLJ Rep. 195 (CA) at pp. 196 I right column – 197 A-E left column). As alluded to earlier I have accepted the evidence of SP2 that there is a lockset on the door of the exhaust room and the failure of the plaintiff to call Ahmad Chalil to testify on the condition of the lockset on the exhaust room entailed the court to draw an adverse inference against the plaintiff under s. 114(g) Evidence Act 1950 (*Formosa Resort Properties Sdn Bhd v. Bank Bumiputra Malaysia Bhd* [2010] 6 CLJ 530 (CA) at p. 541)

*Whether The Deceased Was A Trespasser?*

**[13]** As mentioned before it is court's finding that the exhaust room was locked at the material time. I find there is evidence of the deceased being a trespasser in that there is evidence of there being a sign at the door of "SALURAN EKZOS DAPUR" based

A on the evidence of SP2 supported by the photos exhs. P4(1)(c) and (d). Further evidence of the said signage on the door to the exhaust room also came from SD2 and SD3.

**[14]** There is evidence from SP1 that they had followed the toilet
B sign but the deceased was looking desperately for a toilet and the deceased entered the exhaust room despite it being dark.

(a) The directional sign board pointing to the toilet is very visible to all patrons of the defendant' premises (exhs. P4(1)(a) and (b) and D3A. This fact is based from the testimonies of SP2
C and SD4.

(b) The condition of the exhaust room being pitch black is drawn from the evidence of SP2 and SD3 apart from SP1.

D **[15]** In *Lee Geok Theng v. Ngee Tai Hoo & Anor* [2000] 1 LNS 220; [2000] 4 MLJ 42 at p. 44 His Lordship KN Segara stated:

> Ideally, when a defendant wishes to rely on *volenti non fit injuria*, the defendant must clearly plead:
>
> E (1) the facts of which the plaintiff was fully appraised giving rise to the risk of injury;
>
> (2) the plaintiff understood the risk and injury; and
>
> (3) the plaintiff voluntarily undertook to be responsible for
> F the risk.

(a) I find the defendants had pleaded the defence of *volenti non fit injuria* in para. 14 and particularised the matters adverted to in *Lee Geok Theng (supra)* from (a) to (h). I agreed with the
G defendants' submission that the deceased had acted recklessly when he entered the exhaust room knowing fully well he was on the 7th floor and despite the presence of clear directional signboard pointing to the direction of the toilet and the said room being pitch dark. Hence I agreed that the deceased, a
H college student aged 19 was fully appraised of and understood the risk of injury may result in trespassing the exhaust room and he assumed responsibility for the risk which entitled the defendant to rely on the defence of *volenti non fit injuria* to absolve the defendant's liability.

I

*Whether The Deceased's Action Of Entering The Exhaust Room Is Negligent And/Unreasonable And/Unforeseeable?*

**[16]** The deceased wanted to pass urine. However his action in entering the exhaust room despite the presence of visible directional signs along the walkway of the 7th floor of the defendant's premises pointing to the toilet and the signage on the door of the exhaust room indicated he acted negligently, unreasonably and recklessly and further his action was unforeseeable. No reasonable person would have acted as what the deceased did given the facts matrix of this case.

(a) In *McKew v. Holland & Hannen & Cubitts (Scotland), Ltd* [1969] 3 All ER 1621, the appellant sustained injury in the course of his employment for which the respondents were liable. He suffered a second accident and contended that the second accident was caused by the weakness of his left leg which was caused by the first accident. The respondents argued that the second accident was not the direct or natural and probable or foreseeable result of their fault in causing the 1st accident. Lord Reid at p. 1623 opined:

> In my view the law is clear. If a man is injured in such a way that his leg may give way at any moment he must act reasonably and carefully. It is quite possible that in spite of all reasonable care his leg may give way in circumstances such that as a result he sustains further injury. Then that second injury was caused by his disability which in turn was caused by the defender's fault. *But if the injured man acts unreasonably he cannot hold the defender liable for injury caused by his own unreasonable conduct. His unreasonable conduct is novus actus interveniens. The chain of causation has been broken and what follows must be regarded as caused by his own conduct and not by the defender's fault or the disability caused by it.* Or one may say that unreasonable conduct of the pursuer and what follows from it is not the natural and probable result of the original fault of the defender or of the ensuing disability. I do not think that foreseeability comes into this. **A defender is not liable for a consequence of a kind which is not foreseeable**. But it does not follow that he is liable for every consequence which a reasonable man could foresee. (emphasis added)

(b) Applying the principle to the circumstances of the instant case, the defendants cannot be liable for the unreasonable conduct of the plaintiff which is unforeseeable.

*Whether The Deceased's Entry Was An Illegal Act?*

**[17]** The defendants submit the deceased in entering the exhaust room which was securely locked and despite the presence of visible and directional signs along the walkway on the 7th floor of the defendants' premises and the signage on the door of the exhaust room constitutes an illegal act of trespassing on the part of the deceased which merits the application of the maxim *ex turpi causa non oritur actio*.

(a) I agree with the defendant's submission that the defendants are not liable premised on:

(i) the principle on trespass propounded in *Winfield and Jolowicz on Tort* 12th edn. at p. 370, the learned author relying on *The Six Carpenters' Case* 1610 8 Co Rep 146a stated:

> Trespass *ab initio*
>
> Where an entry upon land or other *prima facie* trespass is justified by the authority of the law itself, then, according to an ancient doctrine of the common law, if the actor abuses his authority he becomes a trespasser *ab initio*; his act is reckoned as unlawful from the very beginning, however innocent his conduct may have been up to the moment of the abuse.

(ii) the case of *Clunis v. Camden and Islington Health Authority* [1998] 3 All ER 180, where the Court of Appeal allowed the appeal of the Health Authority (the defendant) against the dismissal of their application by the deputy judge to strike out the plaintiff's claim as disclosing no cause of action, *inter alia*, on the ground that it was based on his own illegal act which amounted to the crime of manslaughter. In addressing this ground, the Court of Appeal at p. 189 stated:

> In the present case we consider the defendant has made out its plea that the plaintiff's claim is essentially based on his illegal act of manslaughter; he must be taken to have known what he was doing and that it was wrong, notwithstanding that the degree of his culpability was reduced by reason of mental disorder. The court ought not to allow itself to be made an instrument to enforce obligations alleged to arise out of the plaintiff's own criminal act and we would therefore allow the appeal on this ground.

## Finding On Liability

**[18]** On a balance of probabilities I find the plaintiff has not proven his claim and the claim is hereby dismissed.

## Quantum

**[19]** In the event I err on my finding on liability, I shall now address the issue of quantum. The plaintiff has withdrawn his claim in respect of the following items in his statement of claim at p. 9 bundle A, namely, (a) general damages, (c) damages for pain and suffering and (d) bereavement.

**[20]** Special damages has been agreed at RM1,002.

**[21]** What is in issue is the question of the claim for aggravated 10 damages. The plaintiff cited the cases of *Yeoh Yew Jin v. Mohd Zabidi Hassan & Satu Lagi & Kes Yang Lain* [2011] 1 LNS 695 (Guaman Sivil No. 22-34-2005) (HC) and *Suzana Md Aris v. DSP Ishak Hussain & Ors* [2011] 1 CLJ 226 (HC).

**[22]** In *Yeoh Yew Jin (supra)* learned Chew Swee Ho JC (as he then was) held:

> Maka gantirugi teruk hanya diawadkan jika terdapat keterangan bahawa "feelings of dignity and pride" pihak Plaintif-Plaintif telah dicederakan dan ini termasuk kecederaan psikologikal; lihat *Rowlands v. Chief Constable of 20 Merseyside* [2006] 1 WLR 1065 CA. Bagi gantirugi teladan, House of Lords melalui kes *Rookes v. Barnard (supra)* telah menghadkan awad ini kepada dua kategori kes iaitu kes-kes "oppressive, arbitrary or unconstitutional action by the servants of the government" dan kes-kes dimana "the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. (muka surat 1226 *Rookes v. Barnard*).

(a) The issue of "feelings of dignity and pride" does not arise on the facts of this case. In any event as pointed by the learned counsel for the defendants the plaintiff has not adduced any evidence of injury to feelings. Thus the plaintiff is not entitled to any claim for aggravated damages.

**[23]** Learned counsel for the plaintiff relied on the *dictum* of learned Lee Swee Seng JC at p. 237 E-G 5:

> Everyone is to be treated with dignity and respect irrespective of his standing in society whether he be a quite decent person or a suspected drug addict. To aggravate matters the plaintiff was given a run-a-round with respect to where to claim the body of the deceased. The court's and society's abhorrence of what had happened in police custody resulting in 10 the untimely death of the deceased at age of 31 is reflected in the 'aggravated damages of RM500,000' awarded reflecting the public's aghast, alarm and anger aroused by such apathy, abuse and abdication of duty on the part of the police.

(a) The facts of the case of *Suzana (supra)* are distinguishable. Again the plaintiff's claim for aggravated damages must fail.

**Conclusion**

**[24]** For the foregoing reasons, since I find on a balance of probabilities the plaintiff has not proven its claim, I dismissed the plaintiff's claim with costs.

(a) By consent the plaintiff is to pay the defendants costs of RM5,000.